

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2008-0494-MSW-E TCEQ ID: RN105211775 CASE NO.: 35619**  
**RESPONDENT NAME: R. J. Whitfield**

Page 1 of 2

|   |   |   |
|---|---|---|
| <b>ORDER TYPE:</b>  |   |   |
| <input checked="" type="checkbox"/> 1660 AGREED ORDER   | <input type="checkbox"/> FINDINGS AGREED ORDER              | <input type="checkbox"/> FINDINGS ORDER FOLLOWING<br>SOAH HEARING       |
| <input type="checkbox"/> FINDINGS DEFAULT ORDER   | <input type="checkbox"/> SHUTDOWN ORDER                     | <input type="checkbox"/> IMMINENT AND SUBSTANTIAL<br>ENDANGERMENT ORDER |
| <input type="checkbox"/> AMENDED ORDER  | <input type="checkbox"/> EMERGENCY ORDER                    |   |
| <b>CASE TYPE:</b>   |   |   |
| <input type="checkbox"/> AIR  | <input type="checkbox"/> MULTI-MEDIA (check all that apply) | <input type="checkbox"/> INDUSTRIAL AND HAZARDOUS<br>WASTE              |
| <input type="checkbox"/> PUBLIC WATER SUPPLY  | <input type="checkbox"/> PETROLEUM STORAGE TANKS            | <input type="checkbox"/> OCCUPATIONAL CERTIFICATION                     |
| <input type="checkbox"/> WATER QUALITY  | <input type="checkbox"/> SEWAGE SLUDGE                      | <input type="checkbox"/> UNDERGROUND INJECTION<br>CONTROL               |
| <input checked="" type="checkbox"/> MUNICIPAL SOLID WASTE   | <input type="checkbox"/> RADIOACTIVE WASTE                  | <input type="checkbox"/> DRY CLEANER REGISTRATION                       |
| <p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Highway 77 North of Rosebud, east side of Highway 77, three miles north of the light in Rosebud, Falls County</p> <p><b>TYPE OF OPERATION:</b> Unauthorized disposal and tire storage site</p> <p><b>SMALL BUSINESS:</b>    <input checked="" type="checkbox"/> Yes    <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> A complaint was received February 27, 2007, concerning an illegal dump. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on July 21, 2008. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b><br/>    <b>TCEQ Attorney/SEP Coordinator:</b> None<br/>    <b>TCEQ Enforcement Coordinator:</b> Mr. Michael Meyer, Enforcement Division, Enforcement Team 7, MC 128, (512) 239-4492; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171<br/>    <b>Respondent:</b> Mr. R. J. Whitfield, Owner, P.O. Box 338, Rosebud, Texas 76570<br/>    <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p> |   |   |

**VIOLATION SUMMARY CHART:**

| VIOLATION INFORMATION   | PENALTY CONSIDERATIONS  | CORRECTIVE ACTIONS TAKEN/REQUIRED  |
|---|---|--|
| <p><b>Type of Investigation:</b><br/> <input checked="" type="checkbox"/> Complaint<br/> <input type="checkbox"/> Routine<br/> <input checked="" type="checkbox"/> Enforcement Follow-up<br/> <input checked="" type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> February 27, 2007</p> <p><b>Date of Investigation Relating to this Case:</b> January 30, 2008</p> <p><b>Date of NOV/NOE Relating to this Case:</b> February 15, 2008 (NOE)</p> <p><b>Background Facts:</b> This record review was conducted to determine if appropriate corrective action has been taken by the Respondent to resolve violations documented during the previous complaint investigation.</p> <p><b>WASTE</b></p> <p>1) Failure to dispose of municipal solid waste at an authorized facility. Specifically, approximately 350 cubic yards of municipal solid waste, including farm equipment, approximately 50 vehicles, construction debris, and assorted scrap metals were disposed of at the Site [30 TEX. ADMIN. CODE § 330.15(c)].</p> <p>2) Failure to obtain a scrap tire storage registration for storing more than 500 scrap or used tires on the ground. Specifically, approximately 1,000 tires were being stored on the ground at the Site [30 TEX. ADMIN. CODE § 328.60(a)].</p> | <p><b>Total Assessed:</b> \$3,775</p> <p><b>Total Deferred:</b> \$755<br/> <input checked="" type="checkbox"/> Expedited Settlement<br/> <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$3,020</p> <p><b>Site Compliance History Classification</b><br/> <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b><br/> <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p> | <p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondent to:</p> <p>a. Immediately upon the effective date of this Agreed Order, cease accepting and/or disposing of any additional waste at the Site;</p> <p>b. Within 15 days after the effective date of this Agreed Order, obtain a scrap tire storage registration or reduce the number of tires being stored on-site to 500 or less on the ground and/or 2,000 tires in enclosed and lockable containers;</p> <p>c. Within 60 days after the effective date of this Agreed Order, ensure that all unauthorized waste at the Site is removed and properly disposed of at an authorized facility; and</p> <p>d. Within 75 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions a. through c.</p> |

Additional ID No(s): N/A



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision February 29, 2008

TCEQ

|              |                 |             |                  |             |                |  |
|--------------|-----------------|-------------|------------------|-------------|----------------|--|
| <b>DATES</b> | <b>Assigned</b> | 19-Feb-2008 | <b>Screening</b> | 25-Mar-2008 | <b>EPA Due</b> |  |
|              | <b>PCW</b>      | 25-Mar-2008 |                  |             |                |  |

## RESPONDENT/FACILITY INFORMATION

|                             |                 |                           |       |
|-----------------------------|-----------------|---------------------------|-------|
| <b>Respondent</b>           | R. J. Whitfield |                           |       |
| <b>Reg. Ent. Ref. No.</b>   | RN105211775     |                           |       |
| <b>Facility/Site Region</b> | 9-Waco          | <b>Major/Minor Source</b> | Minor |

## CASE INFORMATION

|                          |                       |                          |                    |
|--------------------------|-----------------------|--------------------------|--------------------|
| <b>Enf./Case ID No.</b>  | 35619                 | <b>No. of Violations</b> | 1                  |
| <b>Docket No.</b>        | 2008-0494-MSW-E       | <b>Order Type</b>        | 1660               |
| <b>Media Program(s)</b>  | Municipal Solid Waste | <b>Enf. Coordinator</b>  | Dana Shuler        |
| <b>Multi-Media</b>       |                       | <b>EC's Team</b>         | Enforcement Team 7 |
| <b>Admin. Penalty \$</b> | <b>Limit Minimum</b>  | \$0                      | <b>Maximum</b>     |
|                          |                       |                          | \$10,000           |

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** \$1,000

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

**Compliance History** 10% Enhancement **Subtotals 2, 3, & 7** \$100

**Notes** There are two NOV's for same or similar violations at the Site.

**Culpability** No 0% Enhancement **Subtotal 4** \$0

**Notes** The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply** 0% Reduction **Subtotal 5** \$0

|               |            |                              |
|---------------|------------|------------------------------|
|               | Before NOV | NOV to EDRP/Settlement Offer |
| Extraordinary |            |                              |
| Ordinary      |            |                              |
| N/A           | X          | (mark with x)                |

**Notes** The Respondent does not meet the good faith criteria.

**Total EB Amounts** \$370 **0% Enhancement\*** **Subtotal 6** \$0  
**Approx. Cost of Compliance** \$9,450 **\*Capped at the Total EB \$ Amount**

**SUM OF SUBTOTALS 1-7** **Final Subtotal** \$1,100

**OTHER FACTORS AS JUSTICE MAY REQUIRE** 0% **Adjustment** \$0

Reduces or enhances the Final Subtotal by the indicated percentage.

**Notes**

**Final Penalty Amount** \$1,100

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** \$1,100

**DEFERRAL** 20% Reduction **Adjustment** -\$220

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

**Notes**

Deferral offered for expedited settlement.

**PAYABLE PENALTY** \$880

Screening Date 25-Mar-2008

Docket No. 2008-0494-MSW-E

PCW

Respondent R. J. Whitfield

Policy Revision 2 (September 2002)

Case ID No. 35619

PCW Revision February 29, 2008

Reg. Ent. Reference No. RN105211775

Media [Statute] Municipal Solid Waste

Enf. Coordinator Dana Shuler

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

| Component                     | Number of...   | Enter Number Here | Adjust. |
|-------------------------------|--|-------------------|---------|
| NOVs                          | Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)  | 2                 | 10%     |
|                               | Other written NOVs   | 0                 | 0%      |
| Orders                        | Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)   | 0                 | 0%      |
|                               | Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission | 0                 | 0%      |
| Judgments and Consent Decrees | Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)  | 0                 | 0%      |
|                               | Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government  | 0                 | 0%      |
| Convictions                   | Any criminal convictions of this state or the federal government (number of counts)  | 0                 | 0%      |
| Emissions                     | Chronic excessive emissions events (number of events)  | 0                 | 0%      |
| Audits                        | Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)              | 0                 | 0%      |
|                               | Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)   | 0                 | 0%      |
| Please Enter Yes or No        |  |                   |         |
| Other                         | Environmental management systems in place for one year or more   | No                | 0%      |
|                               | Voluntary on-site compliance assessments conducted by the executive director under a special assistance program  | No                | 0%      |
|                               | Participation in a voluntary pollution reduction program   | No                | 0%      |
|                               | Early compliance with, or offer of a product that meets future state or federal government environmental requirements  | No                | 0%      |

Adjustment Percentage (Subtotal 2) 10%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

There are two NOVs for same or similar violations at the Site.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 10%

|   |   |  |  |  |  |       |                |       |                      |                      |                      |                      |  |                      |   |   |           |                      |                      |                      |
|---|---|--|--|--|--|-------|----------------|-------|----------------------|----------------------|----------------------|----------------------|--|----------------------|---|---|-----------|----------------------|----------------------|----------------------|
| <b>Screening Date</b> 25-Mar-2008<br><b>Respondent</b> R. J. Whitfield<br><b>Case ID No.</b> 35619<br><b>Reg. Ent. Reference No.</b> RN105211775<br><b>Media [Statute]</b> Municipal Solid Waste<br><b>Enf. Coordinator</b> Dana Shuler<br><b>Violation Number</b> <input type="text" value="1"/>   | <b>Docket No.</b> 2008-0494-MSW-E<br><b>PCW</b><br><i>Policy Revision 2 (September 2002)</i><br><i>PCW Revision February 29, 2008</i>   |  |  |  |  |       |                |       |                      |                      |                      |                      |  |                      |   |   |           |                      |                      |                      |
| <b>Rule Cite(s)</b> <input type="text" value="30 Tex. Admin. Code § 330.15(c)"/>  |   |  |  |  |  |       |                |       |                      |                      |                      |                      |  |                      |   |   |           |                      |                      |                      |
| <b>Violation Description</b> <input type="text" value="Failed to dispose of municipal solid waste at an authorized facility, as documented during a record review conducted on January 30, 2008. Specifically, approximately 350 cubic yards of municipal solid waste, including farm equipment, approximately 50 vehicles, construction debris, and assorted scrap metals were disposed of at the Site."/>   |   |  |  |  |  |       |                |       |                      |                      |                      |                      |  |                      |   |   |           |                      |                      |                      |
| <b>Base Penalty</b> <input type="text" value="\$10,000"/>   |   |  |  |  |  |       |                |       |                      |                      |                      |                      |  |                      |   |   |           |                      |                      |                      |
| <b>&gt;&gt; Environmental, Property and Human Health Matrix</b>   |   |  |  |  |  |       |                |       |                      |                      |                      |                      |  |                      |   |   |           |                      |                      |                      |
| <b>OR</b>   | <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td></td> <td colspan="3" style="text-align: center;"><b>Harm</b></td> <td></td> </tr> <tr> <td style="text-align: center;"><b>Release</b></td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> <td></td> </tr> <tr> <td style="text-align: center;">Actual</td> <td><input type="text"/></td> <td><input type="text"/></td> <td style="text-align: center;">x</td> <td rowspan="2" style="vertical-align: middle;"> <b>Percent</b> <input type="text" value="10%"/> </td> </tr> <tr> <td style="text-align: center;">Potential</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> </table> |  | <b>Harm</b>  |  |  |       | <b>Release</b> | Major | Moderate             | Minor                |                      | Actual               | <input type="text"/>                           | <input type="text"/> | x | <b>Percent</b> <input type="text" value="10%"/> | Potential | <input type="text"/> | <input type="text"/> | <input type="text"/> |
|   | <b>Harm</b>   |  |  |  |  |       |                |       |                      |                      |                      |                      |  |                      |   |   |           |                      |                      |                      |
| <b>Release</b>  | Major   | Moderate   | Minor  |  |  |       |                |       |                      |                      |                      |                      |  |                      |   |   |           |                      |                      |                      |
| Actual  | <input type="text"/>  | <input type="text"/>   | x  | <b>Percent</b> <input type="text" value="10%"/>  |  |       |                |       |                      |                      |                      |                      |  |                      |   |   |           |                      |                      |                      |
| Potential   | <input type="text"/>  | <input type="text"/>   | <input type="text"/>   |  |  |       |                |       |                      |                      |                      |                      |  |                      |   |   |           |                      |                      |                      |
| <b>&gt;&gt; Programmatic Matrix</b>   |   |  |  |  |  |       |                |       |                      |                      |                      |                      |  |                      |   |   |           |                      |                      |                      |
| <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td></td> <td style="text-align: center;">Falsification</td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> <td></td> </tr> <tr> <td></td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td rowspan="2" style="vertical-align: middle;"> <b>Percent</b> <input type="text" value="0%"/> </td> </tr> </table>  |   |  | Falsification  | Major  | Moderate                                       | Minor |                |       | <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text"/> | <b>Percent</b> <input type="text" value="0%"/> |                      |   |   |           |                      |                      |                      |
|   | Falsification   | Major  | Moderate   | Minor  |  |       |                |       |                      |                      |                      |                      |  |                      |   |   |           |                      |                      |                      |
|   | <input type="text"/>  | <input type="text"/>   | <input type="text"/>   | <input type="text"/>   | <b>Percent</b> <input type="text" value="0%"/> |       |                |       |                      |                      |                      |                      |  |                      |   |   |           |                      |                      |                      |
| <b>Matrix Notes</b> <input type="text" value="Human health or the environment was exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors."/>  |   |  |  |  |  |       |                |       |                      |                      |                      |                      |  |                      |   |   |           |                      |                      |                      |
| <b>Adjustment</b> <input type="text" value="\$9,000"/>  |   |  |  |  |  |       |                |       |                      |                      |                      |                      |  |                      |   |   |           |                      |                      |                      |
| <input type="text" value="\$1,000"/>  |   |  |  |  |  |       |                |       |                      |                      |                      |                      |  |                      |   |   |           |                      |                      |                      |
| <b>Violation Events</b>   |   |  |  |  |  |       |                |       |                      |                      |                      |                      |  |                      |   |   |           |                      |                      |                      |
| <table style="width: 100%;"> <tr> <td style="width: 40%;"> <b>Number of Violation Events</b> <input type="text" value="1"/> </td> <td style="width: 20%; text-align: center;"> <input type="text" value="55"/> </td> <td style="width: 40%;"> <b>Number of violation days</b> </td> </tr> </table>  |   | <b>Number of Violation Events</b> <input type="text" value="1"/>   | <input type="text" value="55"/>  | <b>Number of violation days</b>  |  |       |                |       |                      |                      |                      |                      |  |                      |   |   |           |                      |                      |                      |
| <b>Number of Violation Events</b> <input type="text" value="1"/>  | <input type="text" value="55"/>   | <b>Number of violation days</b>  |  |  |  |       |                |       |                      |                      |                      |                      |  |                      |   |   |           |                      |                      |                      |
| <table style="width: 100%;"> <tr> <td style="width: 20%; vertical-align: top;"> <i>mark only one with an x</i> </td> <td style="width: 20%;"> <div style="border: 1px solid black; padding: 2px;">daily</div> <div style="border: 1px solid black; padding: 2px;">monthly</div> <div style="border: 1px solid black; padding: 2px;">quarterly</div> <div style="border: 1px solid black; padding: 2px;">semiannual</div> <div style="border: 1px solid black; padding: 2px;">annual</div> <div style="border: 1px solid black; padding: 2px;">single event</div> </td> <td style="width: 60%; text-align: center;"> <div style="border: 1px solid black; padding: 2px; width: 100px;"> <div style="border: 1px solid black; height: 15px; margin-bottom: 2px;"></div> <div style="border: 1px solid black; height: 15px; margin-bottom: 2px;"></div> <div style="border: 1px solid black; height: 15px; margin-bottom: 2px; text-align: center;">x</div> <div style="border: 1px solid black; height: 15px; margin-bottom: 2px;"></div> <div style="border: 1px solid black; height: 15px; margin-bottom: 2px;"></div> <div style="border: 1px solid black; height: 15px;"></div> </div> </td> </tr> </table> |   | <i>mark only one with an x</i>   | <div style="border: 1px solid black; padding: 2px;">daily</div> <div style="border: 1px solid black; padding: 2px;">monthly</div> <div style="border: 1px solid black; padding: 2px;">quarterly</div> <div style="border: 1px solid black; padding: 2px;">semiannual</div> <div style="border: 1px solid black; padding: 2px;">annual</div> <div style="border: 1px solid black; padding: 2px;">single event</div> | <div style="border: 1px solid black; padding: 2px; width: 100px;"> <div style="border: 1px solid black; height: 15px; margin-bottom: 2px;"></div> <div style="border: 1px solid black; height: 15px; margin-bottom: 2px;"></div> <div style="border: 1px solid black; height: 15px; margin-bottom: 2px; text-align: center;">x</div> <div style="border: 1px solid black; height: 15px; margin-bottom: 2px;"></div> <div style="border: 1px solid black; height: 15px; margin-bottom: 2px;"></div> <div style="border: 1px solid black; height: 15px;"></div> </div> |  |       |                |       |                      |                      |                      |                      |  |                      |   |   |           |                      |                      |                      |
| <i>mark only one with an x</i>  | <div style="border: 1px solid black; padding: 2px;">daily</div> <div style="border: 1px solid black; padding: 2px;">monthly</div> <div style="border: 1px solid black; padding: 2px;">quarterly</div> <div style="border: 1px solid black; padding: 2px;">semiannual</div> <div style="border: 1px solid black; padding: 2px;">annual</div> <div style="border: 1px solid black; padding: 2px;">single event</div>  | <div style="border: 1px solid black; padding: 2px; width: 100px;"> <div style="border: 1px solid black; height: 15px; margin-bottom: 2px;"></div> <div style="border: 1px solid black; height: 15px; margin-bottom: 2px;"></div> <div style="border: 1px solid black; height: 15px; margin-bottom: 2px; text-align: center;">x</div> <div style="border: 1px solid black; height: 15px; margin-bottom: 2px;"></div> <div style="border: 1px solid black; height: 15px; margin-bottom: 2px;"></div> <div style="border: 1px solid black; height: 15px;"></div> </div> |  |  |  |       |                |       |                      |                      |                      |                      |  |                      |   |   |           |                      |                      |                      |
| <b>Violation Base Penalty</b> <input type="text" value="\$1,000"/>  |   |  |  |  |  |       |                |       |                      |                      |                      |                      |  |                      |   |   |           |                      |                      |                      |
| <input type="text" value="One quarterly event is recommended from the January 30, 2008 investigation date to the March 25, 2008 screening date."/>  |   |  |  |  |  |       |                |       |                      |                      |                      |                      |  |                      |   |   |           |                      |                      |                      |
| <b>Economic Benefit (EB) for this violation</b>   |   |  |  |  |  |       |                |       |                      |                      |                      |                      |  |                      |   |   |           |                      |                      |                      |
| <b>Statutory Limit Test</b>   |   |  |  |  |  |       |                |       |                      |                      |                      |                      |  |                      |   |   |           |                      |                      |                      |
| <b>Estimated EB Amount</b> <input type="text" value="\$370"/>   | <b>Violation Final Penalty Total</b> <input type="text" value="\$1,100"/>   |  |  |  |  |       |                |       |                      |                      |                      |                      |  |                      |   |   |           |                      |                      |                      |
| <b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$1,100"/>   |   |  |  |  |  |       |                |       |                      |                      |                      |                      |  |                      |   |   |           |                      |                      |                      |

**Economic Benefit Worksheet**

**Respondent** R. J. Whitfield  
**Case ID No.** 35619  
**Reg. Ent. Reference No.** RN105211775  
**Media** Municipal Solid Waste  
**Violation No.** 1

|                         |                              |
|-------------------------|------------------------------|
| <b>Percent Interest</b> | <b>Years of Depreciation</b> |
| 5.0                     | 15                           |

| Item Description | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|
|------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|

No commas, or \$.

**Delayed Costs**

|                          |         |             |             |     |       |     |       |
|--------------------------|---------|-------------|-------------|-----|-------|-----|-------|
| Equipment                |         |             |             | 0.0 | \$0   | \$0 | \$0   |
| Buildings                |         |             |             | 0.0 | \$0   | \$0 | \$0   |
| Other (as needed)        |         |             |             | 0.0 | \$0   | \$0 | \$0   |
| Engineering/construction |         |             |             | 0.0 | \$0   | \$0 | \$0   |
| Land                     |         |             |             | 0.0 | \$0   | n/a | \$0   |
| Record Keeping System    |         |             |             | 0.0 | \$0   | n/a | \$0   |
| Training/Sampling        |         |             |             | 0.0 | \$0   | n/a | \$0   |
| Remediation/Disposal     | \$9,450 | 30-Jan-2008 | 11-Nov-2008 | 0.8 | \$370 | n/a | \$370 |
| Permit Costs             |         |             |             | 0.0 | \$0   | n/a | \$0   |
| Other (as needed)        |         |             |             | 0.0 | \$0   | n/a | \$0   |

Notes for DELAYED costs

Estimated cost to dispose of 350 cubic yards of municipal solid waste (\$27 per cubic yard). Calculated from date of the investigation to the expected date of compliance.

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

|                               |  |  |  |     |     |     |     |
|-------------------------------|--|--|--|-----|-----|-----|-----|
| Disposal                      |  |  |  | 0.0 | \$0 | \$0 | \$0 |
| Personnel                     |  |  |  | 0.0 | \$0 | \$0 | \$0 |
| Inspection/Reporting/Sampling |  |  |  | 0.0 | \$0 | \$0 | \$0 |
| Supplies/equipment            |  |  |  | 0.0 | \$0 | \$0 | \$0 |
| Financial Assurance [2]       |  |  |  | 0.0 | \$0 | \$0 | \$0 |
| ONE-TIME avoided costs [3]    |  |  |  | 0.0 | \$0 | \$0 | \$0 |
| Other (as needed)             |  |  |  | 0.0 | \$0 | \$0 | \$0 |

Notes for AVOIDED costs

Approx. Cost of Compliance

\$9,450

TOTAL

\$370

# Compliance History

|   |  |                         |  |                   |
|---|--|-------------------------|--|-------------------|
| Customer/Respondent/Owner-Operator:   | CN603180381  | WHITFIELD, R J          | Classification: AVERAGE                          | Rating: 5.00      |
| Regulated Entity:   | RN105211775  | HWY 77 NORTH OF ROSEBUD | Classification: AVERAGE                          | Site Rating: 5.00 |
| ID Number(s):   |  |                         |  |                   |
| Location:   | EAST SIDE OF HWY 77, THREE MILES NORTH OF THE LIGHT IN ROSEBUD |                         | Rating Date: September 01 07 Repeat Violator: NO |                   |
| TCEQ Region:  | REGION 09 - WACO   |                         |  |                   |
| Date Compliance History Prepared:   | March 27, 2008   |                         |  |                   |
| Agency Decision Requiring Compliance History:   | Enforcement  |                         |  |                   |
| Compliance Period:  | March 25, 2003 to March 25, 2008                               |                         |  |                   |
| TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History |  |                         |  |                   |
| Name:   | Dana Shuler  |                         | Phone:   | (512) 239-2505    |

## Site Compliance History Components

|  |     |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period?    | No  |
| 3. If Yes, who is the current owner?   | N/A |
| 4. If Yes, who was/were the prior owner(s)?  | N/A |
| 5. When did the change(s) in ownership occur?  | N/A |

## Components (Multimedia) for the Site :

|    |   |   |                 |          |
|----|---|---|-----------------|----------|
| A. | Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government. |   |                 |          |
|    | N/A   |   |                 |          |
| B. | Any criminal convictions of the state of Texas and the federal government.  |   |                 |          |
|    | N/A   |   |                 |          |
| C. | Chronic excessive emissions events.   |   |                 |          |
|    | N/A   |   |                 |          |
| D. | The approval dates of investigations. (CCEDS Inv. Track. No.)   |   |                 |          |
|    | 1   | 05/11/2007  | (558929)        |          |
|    | 2   | 11/01/2007  | (569812)        |          |
|    | 3   | 11/06/2007  | (599788)        |          |
|    | 4   | 02/14/2008  | (616534)        |          |
| E. | Written notices of violations (NOV). (CCEDS Inv. Track. No.)  |   |                 |          |
|    | Date:   | 07/13/2007  | (558929)        |          |
|    | Self Report?  | NO  | Classification: | Moderate |
|    | Citation:   | 2D TWC Chapter 26, SubChapter A 26.121(a)(1)<br>30 TAC Chapter 330, SubChapter A 330.15   |                 |          |
|    | Description:  | Failure to prevent the unauthorized discharge of municipal solid waste into or adjacent to waters of the State.                                       |                 |          |
|    | Date:   | 07/16/2007  | (555405)        |          |
|    | Self Report?  | NO  | Classification: | Moderate |
|    | Citation:   | 30 TAC Chapter 330, SubChapter A 330.7(a)   |                 |          |
|    | Description:  | Failure to obtain a permit or other authorization from the commission, authorizing the disposal of municipal solid waste.                             |                 |          |
|    | Self Report?  | NO  | Classification: | Moderate |
|    | Citation:   | 30 TAC Chapter 330, SubChapter A 330.15(a)  |                 |          |
|    | Description:  | Failure to prevent the unauthorized discharge of municipal solid waste into or adjacent to waters of the State.                                       |                 |          |
|    | Self Report?  | NO  | Classification: | Minor    |
|    | Citation:   | 30 TAC Chapter 328, SubChapter F 328.60(a)  |                 |          |
|    | Description:  | Failure to obtain a scrap tire storage site registration from the executive director, before storing more than 500 used or scrap tires on the ground. |                 |          |

- F. Environmental audits.  
N/A
- G. Type of environmental management systems (EMSs).  
N/A
- H. Voluntary on-site compliance assessment dates.  
N/A
- I. Participation in a voluntary pollution reduction program.  
N/A
- J. Early compliance.  
N/A

Sites Outside of Texas

N/A





Policy Revision 2 (September 2002)

## Penalty Calculation Worksheet (PCW)

PCW Revision February 29, 2008

TCEQ

DATES

Assigned 19-Feb-2008

PCW 25-Mar-2008

Screening 25-Mar-2008

EPA Due

## RESPONDENT/FACILITY INFORMATION

Respondent R. J. Whitfield

Reg. Ent. Ref. No. RN105211775

Facility/Site Region 9-Waco

Major/Minor Source Major

## CASE INFORMATION

Enf./Case ID No. 35619

Docket No. 2008-0494-MSW-E

Media Program(s) Municipal Solid Waste

Multi-Media

No. of Violations 1

Order Type 1660

Enf. Coordinator Dana Shuler

EC's Team Enforcement Team 7

Admin. Penalty \$ Limit Minimum \$0 Maximum \$10,000

## Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)

Subtotal 1 \$2,500

## ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History

7% Enhancement

Subtotals 2, 3, &amp; 7 \$175

Notes There was one NOV for same or similar violations and one NOV for dissimilar violations at the Site.

Culpability

No

0% Enhancement

Subtotal 4 \$0

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply

0% Reduction

Subtotal 5 \$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary

Ordinary

N/A

X

(mark with x)

Notes The Respondent does not meet the good faith criteria.

0% Enhancement\*

Subtotal 6 \$0

\*Capped at the Total EB \$ Amount

Total EB Amounts \$392

Approx. Cost of Compliance \$10,000

## SUM OF SUBTOTALS 1-7

Final Subtotal \$2,675

## OTHER FACTORS AS JUSTICE MAY REQUIRE

0%

Adjustment \$0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount \$2,675

## STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty \$2,675

## DEFERRAL

20%

Reduction

Adjustment -\$535

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

## PAYABLE PENALTY

\$2,140

Screening Date 25-Mar-2008

Docket No. 2008-0494-MSW-E

PCW

Respondent R. J. Whitfield

Policy Revision 2 (September 2002)

Case ID No. 35619

PCW Revision February 29, 2008

Reg. Ent. Reference No. RN105211775

Media [Statute] Municipal Solid Waste

Enf. Coordinator Dana Shuler

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

| Component                     | Number of...   | Enter Number Here | Adjust. |
|-------------------------------|--|-------------------|---------|
| NOVs                          | Written NOVs with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )   | 1                 | 5%      |
|                               | Other written NOVs   | 1                 | 2%      |
| Orders                        | Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )  | 0                 | 0%      |
|                               | Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission | 0                 | 0%      |
| Judgments and Consent Decrees | Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )                              | 0                 | 0%      |
|                               | Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government  | 0                 | 0%      |
| Convictions                   | Any criminal convictions of this state or the federal government ( <i>number of counts</i> )   | 0                 | 0%      |
| Emissions                     | Chronic excessive emissions events ( <i>number of events</i> )   | 0                 | 0%      |
| Audits                        | Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )     | 0                 | 0%      |
|                               | Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )  | 0                 | 0%      |
| Please Enter Yes or No        |  |                   |         |
| Other                         | Environmental management systems in place for one year or more   | No                | 0%      |
|                               | Voluntary on-site compliance assessments conducted by the executive director under a special assistance program  | No                | 0%      |
|                               | Participation in a voluntary pollution reduction program   | No                | 0%      |
|                               | Early compliance with, or offer of a product that meets future state or federal government environmental requirements  | No                | 0%      |

Adjustment Percentage (Subtotal 2) 7%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

There was one NOV for same or similar violations and one NOV for dissimilar violations at the Site.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 7%

|  |  |   |  |                                       |  |
|--|--|---|--|---------------------------------------|--|
| <b>Screening Date</b> 25-Mar-2008                      |  | <b>Docket No.</b> 2008-0494-MSW-E   |  | <b>PCW</b>                            |  |
| <b>Respondent</b> R. J. Whitfield                      |  | <i>Policy Revision 2 (September 2002)</i>   |  |                                       |  |
| <b>Case ID No.</b> 35619                               |  | <i>PCW Revision February 29, 2008</i>   |  |                                       |  |
| <b>Reg. Ent. Reference No.</b> RN105211775             |  |   |  |                                       |  |
| <b>Media [Statute]</b> Municipal Solid Waste           |  |   |  |                                       |  |
| <b>Enf. Coordinator</b> Dana Shuler                    |  |   |  |                                       |  |
| <b>Violation Number</b> <input type="text" value="1"/> |  |   |  |                                       |  |
| <b>Rule Cite(s)</b>                                    |  | <input type="text" value="30 Tex. Admin. Code § 328.60(a)"/>  |  |                                       |  |
| <b>Violation Description</b>                           |  | <input type="text" value="Failed to obtain a scrap tire storage registration for storing more than 500 scrap or used tires on the ground, as documented during a record review conducted on January 30, 2008. Specifically, approximately 1,000 tires were being stored on the ground at the Site."/> |  |                                       |  |
|  |  | <b>Base Penalty</b>   |  | <input type="text" value="\$10,000"/> |  |

**>> Environmental, Property and Human Health Matrix**

|           |                |                      |                      |                      |  |
|-----------|----------------|----------------------|----------------------|----------------------|--|
| <b>OR</b> | <b>Harm</b>    |                      |                      |                      |  |
|           | <b>Release</b> | <b>Major</b>         | <b>Moderate</b>      | <b>Minor</b>         |  |
|           | Actual         | <input type="text"/> | <input type="text"/> | <input type="text"/> |  |
|           | Potential      | <input type="text"/> | <input type="text"/> | <input type="text"/> |  |
|           |                |                      |                      |                      | <b>Percent</b> <input type="text" value="0%"/> |

**>> Programmatic Matrix**

|                                |                      |                      |  |  |   |
|--------------------------------|----------------------|----------------------|--|--|---|
| <b>Falsification</b>           |                      |                      |  |  |   |
| <b>Major</b>                   | <b>Moderate</b>      | <b>Minor</b>         |  |  |   |
| <input type="text" value="x"/> | <input type="text"/> | <input type="text"/> |  |  |   |
| <input type="text"/>           | <input type="text"/> | <input type="text"/> |  |  |   |
|                                |                      |                      |  |  | <b>Percent</b> <input type="text" value="25%"/> |

|                     |  |
|---------------------|--|
| <b>Matrix Notes</b> | <input type="text" value="100% of the rule requirement was not met."/> |
|---------------------|--|

|                   |                                      |
|-------------------|--------------------------------------|
| <b>Adjustment</b> | <input type="text" value="\$7,500"/> |
|-------------------|--------------------------------------|

|  |                                      |
|--|--------------------------------------|
|  | <input type="text" value="\$2,500"/> |
|--|--------------------------------------|

**Violation Events**

|                                   |                                |                                 |                                 |
|-----------------------------------|--------------------------------|---------------------------------|---------------------------------|
| <b>Number of Violation Events</b> | <input type="text" value="1"/> | <b>Number of violation days</b> | <input type="text" value="55"/> |
|-----------------------------------|--------------------------------|---------------------------------|---------------------------------|

|                                |              |                                |
|--------------------------------|--------------|--------------------------------|
| <i>mark only one with an x</i> | daily        | <input type="text"/>           |
|                                | monthly      | <input type="text"/>           |
|                                | quarterly    | <input type="text" value="x"/> |
|                                | semiannual   | <input type="text"/>           |
|                                | annual       | <input type="text"/>           |
|                                | single event | <input type="text"/>           |

|                               |                                      |
|-------------------------------|--------------------------------------|
| <b>Violation Base Penalty</b> | <input type="text" value="\$2,500"/> |
|-------------------------------|--------------------------------------|

|  |  |
|--|--|
| <input type="text" value="One quarterly event is recommended from the January 30, 2008 investigation date to the March 25, 2008 screening date."/> |  |
|--|--|

|   |   |
|---|---|
| <b>Economic Benefit (EB) for this violation</b>   | <b>Statutory Limit Test</b>   |
| <b>Estimated EB Amount</b> <input type="text" value="\$392"/>   | <b>Violation Final Penalty Total</b> <input type="text" value="\$2,675"/> |
| <b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$2,675"/> |   |

**Economic Benefit Worksheet**

**Respondent** R. J. Whitfield  
**Case ID No.** 35619  
**Reg. Ent. Reference No.** RN105211775  
**Media** Municipal Solid Waste  
**Violation No.** 1

|                         |                              |
|-------------------------|------------------------------|
| <b>Percent Interest</b> | <b>Years of Depreciation</b> |
| 5.0                     | 15                           |

| Item Description | Item Cost<br>No commas or \$ | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|------------------|------------------------------|---------------|------------|-----|----------------|---------------|-----------|
|------------------|------------------------------|---------------|------------|-----|----------------|---------------|-----------|

**Delayed Costs**

|                          |          |             |             |     |       |     |       |
|--------------------------|----------|-------------|-------------|-----|-------|-----|-------|
| Equipment                |          |             |             | 0.0 | \$0   | \$0 | \$0   |
| Buildings                |          |             |             | 0.0 | \$0   | \$0 | \$0   |
| Other (as needed)        |          |             |             | 0.0 | \$0   | \$0 | \$0   |
| Engineering/construction |          |             |             | 0.0 | \$0   | \$0 | \$0   |
| Land                     |          |             |             | 0.0 | \$0   | n/a | \$0   |
| Record Keeping System    |          |             |             | 0.0 | \$0   | n/a | \$0   |
| Training/Sampling        |          |             |             | 0.0 | \$0   | n/a | \$0   |
| Remediation/Disposal     |          |             |             | 0.0 | \$0   | n/a | \$0   |
| Permit Costs             | \$10,000 | 30-Jan-2008 | 11-Nov-2008 | 0.8 | \$392 | n/a | \$392 |
| Other (as needed)        |          |             |             | 0.0 | \$0   | n/a | \$0   |

Notes for DELAYED costs

Estimated cost to register as a tire storage site. Calculated from date of the investigation to the expected date of compliance.

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

|                               |  |  |  |     |     |     |     |
|-------------------------------|--|--|--|-----|-----|-----|-----|
| Disposal                      |  |  |  | 0.0 | \$0 | \$0 | \$0 |
| Personnel                     |  |  |  | 0.0 | \$0 | \$0 | \$0 |
| Inspection/Reporting/Sampling |  |  |  | 0.0 | \$0 | \$0 | \$0 |
| Supplies/equipment            |  |  |  | 0.0 | \$0 | \$0 | \$0 |
| Financial Assurance [2]       |  |  |  | 0.0 | \$0 | \$0 | \$0 |
| ONE-TIME avoided costs [3]    |  |  |  | 0.0 | \$0 | \$0 | \$0 |
| Other (as needed)             |  |  |  | 0.0 | \$0 | \$0 | \$0 |

Notes for AVOIDED costs

Approx. Cost of Compliance

\$10,000

TOTAL

\$392

# Compliance History

|   |  |                         |                              |                     |
|---|--|-------------------------|------------------------------|---------------------|
| Customer/Respondent/Owner-Operator:   | CN603180381  | WHITFIELD, R J          | Classification: AVERAGE      | Rating: 5.00        |
| Regulated Entity:   | RN105211775  | HWY 77 NORTH OF ROSEBUD | Classification: AVERAGE      | Site Rating: 5.00   |
| ID Number(s):   |  |                         |                              |                     |
| Location:   | EAST SIDE OF HWY 77 E, THREE MILES NORTH OF THE LIGHT IN ROSEBUD |                         | Rating Date: September 01 07 | Repeat Violator: NO |
| TCEQ Region:  | REGION 09 - WACO   |                         |                              |                     |
| Date Compliance History Prepared:   | March 27, 2008   |                         |                              |                     |
| Agency Decision Requiring Compliance History:   | Enforcement  |                         |                              |                     |
| Compliance Period:  | March 25, 2003 to March 25, 2008                                 |                         |                              |                     |
| TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History |  |                         |                              |                     |
| Name:   | Dana Shuler  |                         | Phone:                       | (512) 239-2505      |

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
  - 1 05/11/2007 (558929)
  - 2 11/01/2007 (569812)
  - 3 11/06/2007 (599788)
  - 4 02/14/2008 (616534)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 

|              |   |          |                          |
|--------------|---|----------|--------------------------|
| Date:        | 07/13/2007  | (558929) |                          |
| Self Report? | NO  |          | Classification: Moderate |
| Citation:    | 2D TWC Chapter 26, SubChapter A 26.121(a)(1)<br>30 TAC Chapter 330, SubChapter A 330.15   |          |                          |
| Description: | Failure to prevent the unauthorized discharge of municipal solid waste into or adjacent to waters of the State.                                       |          |                          |
| Date:        | 07/16/2007  | (555405) |                          |
| Self Report? | NO  |          | Classification: Moderate |
| Citation:    | 30 TAC Chapter 330, SubChapter A 330.7(a)   |          |                          |
| Description: | Failure to obtain a permit or other authorization from the commission, authorizing the disposal of municipal solid waste.                             |          |                          |
| Self Report? | NO  |          | Classification: Moderate |
| Citation:    | 30 TAC Chapter 330, SubChapter A 330.15(a)  |          |                          |
| Description: | Failure to prevent the unauthorized discharge of municipal solid waste into or adjacent to waters of the State.                                       |          |                          |
| Self Report? | NO  |          | Classification: Minor    |
| Citation:    | 30 TAC Chapter 328, SubChapter F 328.60(a)  |          |                          |
| Description: | Failure to obtain a scrap tire storage site registration from the executive director, before storing more than 500 used or scrap tires on the ground. |          |                          |

- F. Environmental audits.  
N/A
- G. Type of environmental management systems (EMSs).  
N/A
- H. Voluntary on-site compliance assessment dates.  
N/A
- I. Participation in a voluntary pollution reduction program.  
N/A
- J. Early compliance.  
N/A

Sites Outside of Texas

N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
R. J. WHITFIELD  
RN105211775

§        BEFORE THE  
§  
§        TEXAS COMMISSION ON  
§  
§        ENVIRONMENTAL QUALITY

## AGREED ORDER DOCKET NO. 2008-0494-MSW-E

### I. JURISDICTION AND STIPULATIONS

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding R. J. Whitfield ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 361 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns an unauthorized disposal and tire storage site located on the east side of Highway 77, three miles north of the light in Rosebud, Falls County, Texas (the "Site").
2. The Site involves or involved the management of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about February 20, 2008.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Three Thousand Seven Hundred Seventy-Five Dollars (\$3,775) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Three Thousand Twenty Dollars (\$3,020) of the administrative penalty and Seven Hundred Fifty-Five Dollars (\$755) is deferred contingent upon





the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## **II. ALLEGATIONS**

As owner and operator of the Site, the Respondent is alleged to have:

1. Failed to dispose of municipal solid waste at an authorized facility, in violation of 30 TEX. ADMIN. CODE § 330.15(c), as documented during a record review conducted on January 30, 2008. Specifically, approximately 350 cubic yards of municipal solid waste, including farm equipment, approximately 50 vehicles, construction debris, and assorted scrap metals were disposed of at the Site.
2. Failed to obtain a scrap tire storage registration for storing more than 500 scrap or used tires on the ground, in violation of 30 TEX. ADMIN. CODE § 328.60(a), as documented during a record review conducted on January 30, 2008. Specifically, approximately 1,000 tires were being stored on the ground at the Site.

## **III. DENIALS**

The Respondent generally denies each allegation in Section II ("Allegations").



#### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: R. J. Whitfield, Docket No. 2008-0494-MSW-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. It is further ordered that the Respondent shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Agreed Order, cease accepting and/or disposing of any additional waste at the Site;
  - b. Within 15 days after the effective date of this Agreed Order, obtain a scrap tire storage registration or reduce the number of tires being stored on-site to 500 or less on the ground and/or 2,000 tires in enclosed and lockable containers, in accordance with 30 TEX. ADMIN. CODE §§ 328.56 and 328.60;
  - c. Within 60 days after the effective date of this Agreed Order, ensure that all unauthorized waste at the Site is removed and properly disposed of at an authorized facility; and
  - d. Within 75 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.c.

The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:



Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Waste Section Manager  
Waco Regional Office  
Texas Commission on Environmental Quality  
6801 Sanger Avenue, Suite 2500  
Waco, Texas 76710-7826

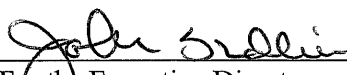
3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.



## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

  
\_\_\_\_\_  
For the Executive Director

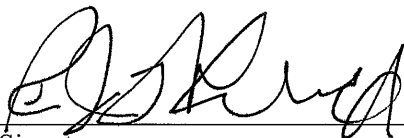
8/29/2008  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

  
\_\_\_\_\_  
Signature

5/14/08  
Date

R J Whitfield  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
R. J. Whitfield

\_\_\_\_\_  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

5/14/10

10/2/10

10/2/10